No. 89-1408

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

RANDALL TERRY, OPERATION RESCUE, *et al.*,

Petitioners,

—v.—

NEW YORK STATE NATIONAL ORGANIZATION FOR WOMEN, *et al.*,

Respondents,

CITY OF NEW YORK,

Respondent-Intervenor,

UNITED STATES OF AMERICA,

Respondent-Judgment Creditor.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether respondents' federal claim under 42 U.S.C. § 1985(3) claim was so "obviously frivolous" as to deprive the district court of jurisdiction to enter judgment on the pendent state claims.

II. Whether prospective contempt fines imposed to coerce compliance, and levied on the basis of admissions in stipulated facts, are civil in nature.

LIST OF PARTIES

Respondents accept petitioners' listing of the parties. In accordance with Rule 28.1 of the Rules of this Court, respondents report that Eastern Women's Center, Inc., Planned Parenthood of New York City, Inc., New York State National Abortion Rights Action League ("NARAL"), Inc., Religious Coalition for Abortion Rights - New York Metropolitan Area, and the National Organization for Women are corporations. None of them have parent or subsidiary companies, but New York State NARAL, Inc. is affiliated with the National Abortion Rights Action League, Inc. and Planned Parenthood of New York City, Inc. is affiliated with Planned Parenthood Federation of America, Inc.

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RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE[1]

Introduction

The courts below enjoined organized mobs from physically blocking entrances to health care facilities in the New York City metropolitan area. Every court to address respondents' request for injunctive relief -- the state court in which respondents initially filed their action, the federal district court to which petitioners chose to remove the case, and a unanimous panel of the Court of Appeals for the Second Circuit -- has recognized what is in reality an unremarkable proposition: respondents are entitled to an injunction against petitioners' barring of women's

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[1]The facts and proceedings summarized here for the Court's convenience are also described in the Appendix to Petition for Writ of Certiorari in the opinions of the courts below. See A5 to A11; A57 to A60; A79 to A83; and A118 to A123.

access to health care facilities because such conduct poses the threat of irreparable harm to women's health.

All of the injunctions issued make clear that petitioners are free to picket and to protest. The injunctions simply bar them from forcibly imposing their will on others by physically blockading access to health care facilities. The conduct threatened and engaged in by petitioners is a far cry from picketing. Petitioners Randall Terry and Operation Rescue have vividly and accurately described what participants are expected to do at Operation Rescue demonstrations, A266, A274:

> We will arrive early in the morning, day after day, at given abortion mills, surrounding them with our bodies. This will prevent abortion mill employees or pregnant mothers from entering in to kill their children.
>
> The rescuers may go right

> inside the abortion procedure rooms (before the patients arrive) and lock themselves in. They may fill up the waiting room or they may come before the abortuary opens and block the door on the outside, so no one can get in.

Petitioners have also made clear that they understand their actions are illegal, A275:

> In case you haven't guessed, rescue missions are "breaking the law." Rescuers are almost always arrested and charged with trespass or disorderly conduct.

1. State Court Proceedings

Respondents are national, state, and city women's organizations suing on behalf of their women members, and health care facilities that provide abortions and health care workers and counselors associated with those facilities, suing on their own behalf and on behalf of their patients. They filed this case in New York State Supreme Court in April 1988, in

response to threats by petitioners' organization, "Operation Rescue," to "close down," by physically blocking access to, medical facilities in the New York City area. Randall Terry, National Director of Operation Rescue, had issued detailed written instructions to Operation Rescue participants directing them to keep the entrances to medical facilities blocked, even if police attempted to move them away.

Respondents sought injunctive relief against petitioners' threatened actions under state law, alleging trespass, intentional interference with business relations, intentional infliction of emotional distress, and tortious harassment. They also sought relief under state civil rights law, N.Y. CIV. RIGHTS LAW § 40(c) (McKinney 1976), and 42 U.S.C. § 1985(3) (1982).

On April 28, 1988, New York State Supreme Court Justice Cahn issued a Temporary Restraining Order ("TRO") that did not include an injunction against blocking access, following a representation made to the court by the New York City police that they would be able to guarantee access to the clinics.

On May 2, 1988, however, Operation Rescue blocked access for five hours to a Manhattan doctor's office that provided abortions. Over 500 participants were arrested. That day Justice Cahn modified the TRO to include an express prohibition of blocking access to medical facilities that provided abortions.

Randall Terry was personally served with a copy of the revised TRO on May 3, 1988. At the time, he was leading a second blockade against an abortion facility in Queens. Terry did not alter his previous

instructions to demonstrators to block access, and the police arrested 416 participants for blocking access to the clinic.

On May 3, 1988, New York City ("the City") intervened as plaintiff in the suit because of its inability to guarantee access through police action. Petitioners then removed the action to the United States District Court for the Southern District of New York.

2. District Court Proceedings

a. May 5, 1988 Temporary Restraining Order

On May 4, 1988, after argument, the district court adopted and modified the state court's TRO. The court retained the prohibition of blockades, added a provision for coercive civil contempt sanctions of $25,000 a day, and required petitioners to provide advance notice to the City of the

location of their planned demonstrations. Terry received notice of the terms of this order that evening.[2]

On May 5 and 6, 1988, Operation Rescue again blocked access to clinics. Terry led both demonstrations, and never altered his instructions to block entrances to the facilities. Petitioners also failed to give notice to the City of the location of either demonstration.

b. Contempt Proceedings Re: TRO

On May 31, 1988, respondents moved for civil contempt sanctions for the events of May 5 and 6. The parties submitted three statements of stipulated facts in which petitioners admitted that they had received notice of the court orders and had nonetheless thereafter physically blocked

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[2]Notice of the order was given orally that evening; the order was signed the next day.

access to abortion facilities on May 5 and 6.

On October 27, 1988, the district court granted respondents' motion for civil contempt against Terry and Operation Rescue on the basis of the stipulated facts, and assessed civil fines against them in the amount of $50,000.

c. October 27, 1988 Preliminary Injunction

On October 6, 1988, respondents sought further injunctive relief, because Operation Rescue had announced a "National Day of Rescue" for the weekend of October 29-31, during which they intended again to blockade abortion facilities in the New York area, as well as in numerous cities across the country.

The court held two full days of hearings at petitioners' request. After hearing the evidence presented by petitioners and by

respondents in rebuttal, the district court issued a preliminary injunction on October 27, 1988, enjoining petitioners from blocking access to clinics in the New York City area from October 29-31, 1988.

Petitioners nonetheless blocked access to two abortion facilities in the New York City area on October 29, 1988.

d. January 1989 Permanent Injunction

Despite the court's injunctions, petitioners planned another series of blockades in the New York City area for January 1989. Terry wrote a letter to Operation Rescue participants in which he quoted from the district court's opinion in this case, and stated his intention to disobey any court orders:

> How will we respond? Will we let this N.Y.C. court intimidate us back into silent cooperation with the killing? Or will we face down this judge's order and declare, "Regardless of your threats, we will continue to save children."? [sic] I pray it's the latter.

> **Therefore, after much prayer, thought and counsel, we are asking you to come to New York City on January 12-14, 1989 to rescue the children and mothers, and send a clear signal to the child-killers and the courts, "We will not let you bully us into abandoning children and mothers in New York City, or for that matter, ANYWHERE!"**

Appellants' Appendix, filed with the court of appeals, at 586 (emphasis in original).

On January 10, 1989, the district court granted respondents' summary judgment motion and issued a permanent injunction. The injunction was based upon respondents' state law claims of trespass and public nuisance, and their federal claim under 42 U.S.C. § 1985(3).

3. Court of Appeals

Petitioners appealed all of the district court's orders, including the injunctions, the contempt judgment, and a discovery

ruling. On September 20, 1989, a unanimous panel of the Court of Appeals for the Second Circuit affirmed the district court's judgments in all respects, with one exception: where the district court had directed that the coercive civil contempt sanctions should be payable to respondents, the court of appeals held that they should be payable to the United States.

REASONS FOR DENYING THE WRIT

I. THE 42 U.S.C. § 1985(3) CLAIM IS NOT APPROPRIATE FOR CERTIORARI BECAUSE THE JUDGMENT IS FULLY SUPPORTABLE ON ALTERNATIVE GROUNDS.

Petitioners decline to inform the Court of the most important factor in its determination to grant or deny a writ of certiorari: the judgment below rested not only on 42 U.S.C. § 1985(3), but also on the state law grounds of trespass and public nuisance. A137-A139. Petitioners

do not challenge the court of appeals' holding on the state law grounds. Because these alternative grounds fully support the judgment, this Court need not decide the 42 U.S.C. § 1985(3) questions posed by petitioners.

Where a federal question is substantial, that is, not "obviously frivolous," Hagans v. Levine, 415 U.S. 528, 536-37 (1974), the district court has pendent jurisdiction over all state law claims, and can decide the matter on state law grounds. United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966) (where federal and state claims based on common facts, and federal claim is substantial, court has jurisdiction over pendent state claims); Siler v. Louisville & Nashville Railroad Co., 213 U.S. 175, 193 (1909) (where federal court had jurisdiction because of an alleged constitutional violation, it had "the right

to decide all the questions in the case, even though it decided the Federal questions adversely to the party raising them, or even if it omitted to decide them at all, but decided the case on local or state questions only").[3]

Petitioners cannot and do not contend that the § 1985(3) claim is so "obviously frivolous" and foreclosed by prior decisions of this Court as to defeat subject-matter jurisdiction. In fact, as

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[3]See also Oneida Nation v. County of Oneida, 414 U.S. 661, 666-67 (1974) (court has pendent jurisdiction over state claims unless federal claim is "so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy"); Northern Va. Women's Medical Center v. Balch, 617 F.2d 1045, 1049 (4th Cir. 1980) (§ 1985(3) was a "substantial federal claim" permitting pendent jurisdiction over state claims against clinic trespassers); Portland Feminist Women's Health Center v. Advocates For Life, Inc., 681 F.Supp. 688, 691 (D. Or. 1988) (retaining jurisdiction over state claims after § 1985(3) claim (not "right to travel") was dismissed).

demonstrated in Section II, infra, respondents' § 1985(3) claim, far from being foreclosed by prior case law, is fully supported by precedent.

Because of the substantial § 1985(3) claim, the district court had subject matter jurisdiction to hear the pendent claims. The court of appeals and the district court both held that the permanent injunction issued in this case is fully supportable under state law trespass and nuisance grounds. A45-A47; A137-A139. New York state appellate courts have routinely upheld injunctions granted on state grounds against similar attempts to block access physically to abortion facilities.[4]

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[4]See, e.g., Parkmed Co., v. Pro-Life Counseling, Inc., 91 A.D.2d 551, 552, 457 N.Y.S.2d 27, 29 (1st Dep't 1982) (enjoining anti-abortion demonstrators from, inter alia, "blocking the ingress and egress to" an abortion clinic, and "physically abusing and harassing people"); O.B.G.Y.N. Assocs.

Petitioners do not challenge the state law bases for the injunction, and accordingly, even if they prevailed in challenging the lower courts' unanimous holdings under 42 U.S.C. § 1985(3) on the merits, the underlying judgment would not be disturbed.

Moreover, to the extent that the § 1985(3) claim raises constitutional questions, it has long been an established principle of this Court's jurisprudence that constitutional questions should be avoided if a judgment can be supported on non-constitutional grounds. Siler v. Louisville & Nashville Railroad Co., 213 U.S. at 191 ("we think it much better to decide [the case] with regard to the

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v. Birthright of Brooklyn, 64 A.D.2d 894, 895, 407 N.Y.S.2d 903, 905 (2d Dep't 1978) (enjoining anti-abortion demonstrators from "barring any person from entering or exiting plaintiffs' premises").

question of a local nature ... rather than to unnecessarily decide the various constitutional questions appearing in the record"). Accord Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) ("The Court will not pass upon a constitutional question, although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.")[5]

Because the § 1985(3) claim involves constitutional issues and need not be reached to support the judgment below, the § 1985(3) claim is an improper basis for grant of a writ of certiorari.

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[5]This rule is an important component of the "settled doctrine that we avoid constitutional questions whenever possible." West v. Atkins, 487 U.S. 42, 48 n.8 (1988); Three Affiliated Tribes v. Wold Eng'g, 467 U.S. 138, 158 (1984); Massachusetts v. Westcott, 431 U.S. 322, 323 (1977); Spector Motor Service, Inc. v. McLaughlin, 323 U.S. 101, 105 (1944).

II. THE COURT OF APPEALS' DECISION ON 42 U.S.C. § 1985(3) IS NOT IN CONFLICT WITH THE DECISIONS OF THIS COURT OR THE OTHER CIRCUITS.

Even if it were necessary to reach the 42 U.S.C. § 1985(3) claim in this case, petitioners fail to demonstrate any conflict with decisions of this Court or with those of other courts of appeals. The court of appeals unanimously held that respondents prevailed under § 1985(3) by demonstrating that petitioners conspired, with animus, to deprive a class of women of their right to travel to obtain medical services, by forcibly blocking their access to the medical facilities to which they traveled.

Petitioners challenge only two aspects of the court's ruling in this regard: its conclusion that gender-based animus is sufficient to support a § 1985(3) claim and its conclusion that petitioners' actions

infringed women's right to travel. Yet petitioners point to not a single decision of this Court or any court of appeals that holds to the contrary. Accordingly, petitioners have failed to demonstrate any basis for this Court to grant a writ of certiorari.

A. There Is No Conflict Among the Circuit Courts As To Whether Gender-Based Animus Is Sufficient To Support a Claim Under § 1985(3).

Section 1985(3) proscribes conspiracies to deprive persons of civil rights that are motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus." United Bhd.of Carpenters and Joiners, Local 610 v. Scott, 463 U.S. 825, 835 (1983), quoting Griffin v. Breckenridge, 403 U.S. 88, 102 (1971). The court of appeals found that petitioners' conspiracy here was motivated by animus against women, and held that such

animus constitutes class-based animus for purposes of § 1985(3). A40.

Contrary to petitioners' inaccurate and misleading chart, Pet. at 6-8, this holding is neither novel nor in conflict with the holdings of any other court of appeals. Every court of appeals that has directly addressed the issue has held that § 1985(3) reaches conspiracies motivated by gender-based animus.[6] Petitioners' chart itself

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[6]See Stathos v. Bowder, 728 F.2d 15, 20 (1st Cir. 1984); Life Ins. Co. of North Am. v. Reichardt, 591 F.2d 499, 502, 505 (9th Cir. 1979); Novotny v. Gt. Am. Fed'l Sav. & Loan Ass'n, 584 F.2d 1235, 1243-44 (3d Cir. 1978) (en banc), rev'd on other grounds, 442 U.S. 366 (1979); Conroy v. Conroy, 575 F.2d 175, 177 (8th Cir. 1978); cf. Long v. Laramie County Community College Dist., 840 F.2d 743, 752-53 (10th Cir.) (reversing summary judgment in defendants' favor in sexual harassment claim based on § 1985(3) and remanding), cert. denied, 109 S.Ct. 73 (1988); Padway v. Palches, 665 F.2d 965, 969 (9th Cir. 1982) (reversing summary judgment in defendant's favor in gender-based § 1985(3) claim and remanding); Northern Va. Women's Medical Center v. Balch, 617 F.2d 1045, 1049 (4th Cir. 1980) (upholding injunction against anti-abortion trespassers sought and obtained under § 1985(3) and on

demonstrates that courts of appeals in seven circuits have recognized gender-based animus under § 1985(3).[7] No court of

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state grounds).

Other courts have stated in dicta that gender-based animus may be actionable. Browder v. Tipton, 630 F.2d 1149, 1154 (6th Cir. 1989); Munson v. Friske, 754 F.2d 683, 695 (7th Cir. 1985); C & K Coal Co. v. United Mine Workers, 704 F.2d 690, 700 (3d Cir. 1983); Shortbull v. Looking Elk, 677 F.2d 645, 648 (5th Cir.), cert. denied, 459 U.S. 907 (1982).

Nor is Mississippi Women's Medical Clinic v. McMillan, 866 F.2d 788 (5th Cir. 1989) to the contrary. There, the court simply found as a factual matter that defendants' animus was not directed at women. Id. at 794. The district court and court of appeals here found that defendants' animus was gender-based. Moreover, in McMillan, women's access to the clinic was "secure" at all times, because there were no blockades, only pickets. Id. Therefore, the only "right" asserted was a non-existent "right not to hear speech that [plaintiffs] do not wish to hear" in a public forum. Id.

[7]Petitioners' chart is misleading in several respects. It identifies several cases as holding that § 1985(3) covers "only" race-based animus. Pet. at 6-8. In fact, none of the cases cited by petitioners stands for that proposition. Some expressly leave open the question of the reach of

appeals has held that gender-based animus is insufficient to state a claim under § 1985(3), and accordingly no conflict exists.

This Court has expressly left open the question of which classes beyond race are included within the ambit of § 1985(3).

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§ 1985(3) beyond race. See Eitel v. Holland, 787 F.2d 995, 1000 (5th Cir. 1986). Others say that § 1985(3) requires some racial or perhaps other class-based animus. Daigle v. Gulf State Utilities Co., Local 2286, 794 F.2d 974, 978 (5th Cir.), cert. denied, 479 U.S. 1008 (1986); Mears v. Town of Oxford, Md., 762 F.2d 368, 374 (4th Cir. 1985). Still others cited as "race only" by petitioners include gender-based animus as within the reach of § 1985(3), Damato v. Wisconsin Gas Co., 760 F.2d 1474, 1486 (7th Cir. 1985), or suggest that it may be included, Grimes v. Smith, 776 F.2d 1359, 1365 n.10 (7th Cir. 1985). The other cases cited only hold that political and economic animus or animus against handicapped persons does not satisfy § 1985(3); they do not address gender-based animus.

Petitioners also fail to note that in five of the cases they cited to show existing conflict among the circuits on § 1985(3), Pet. at 6-8, this Court denied certiorari.

Scott, 463 U.S. at 837. In Great American Federal Savings & Loan Association v. Novotny, 442 U.S. 366, 389 n.6 (1979) (citation omitted), Justice White noted in his dissent that the majority of the court assumed that gender-based animus did fall within § 1985(3):

> Although Griffin v. Breckenridge did not reach the issue whether discrimination on a basis other than race may be vindicated under § 1985(3), the [majority of this] Court correctly assumes that the answer to this question is "Yes".... It is clear that sex discrimination may be sufficiently invidious to come within the prohibition of § 1985(3)....

Distinctions based on sex have long been considered invidiously discriminatory, even where justified by grounds not expressly malevolent. See Mississippi Univ. for Women v. Hogan, 458 U.S. 718 (1982); Frontiero v. Richardson, 411 U.S. 677 (1973). As the court of appeals stated, A41:

> [i]t is untenable to believe that Congress would provide a statutory remedy against private conspiracies, the purpose of which is to deny rights common to every citizen, and exclude women as a class from the shelter of its protection.

Petitioners argue that their blockades are not directed against all women but only against those women who seek to enter medical facilities that provide abortions. But as the court of appeals recognized, the defendants in Griffin could similarly have argued that their actions were directed only against Blacks "travelling interstate with the perceived purpose of promoting civil rights." A42. The fact that defendants direct their animus towards women who seek to exercise their constitutional rights does not render their animus any less gender-based:

> In most cases of invidious discrimination, violations of constitutional rights occur only in response to the attempts of certain members of a class to do something that

> the perpetrators found objectionable....[8]

Id. (emphasis in original).

Petitioners' organized campaign seeks by sheer force of numbers to prevent women from exercising their constitutional rights, just as the Ku Klux Klan sought to prevent newly-freed slaves from exercising their constitutional rights. It was precisely this type of mob action that Congress sought to remedy in enacting

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[8]In other cases involving clinic blockades, courts have found animus directed at a class of women who seek to enter the clinics sufficient animus for purposes of § 1985(3). Cousins v. Terry, 721 F. Supp. 426, 430 (N.D.N.Y. 1989); Roe v. Operation Rescue, 710 F. Supp. 577, 581 (E.D. Pa. 1989); NOW v. Operation Rescue, 726 F. Supp. 1483 (E.D. Va. 1989); Portland Feminist Women's Health Center v. Advocates for Life, Inc., 712 F. Supp. 165, 169 (D. Or. 1988); Aradia Women's Health Center v. Operation Rescue, Civ. Action No. 88-1539 R, slip op. (W.D. Wa. July 7, 1989). But see National Abortion Fed'n v. Operation Rescue, 721 F. Supp. 1168, 1171-72 (C.D. Cal. 1989) (Tashima, J.), appeal docketed, No. 90-5519 (9th Cir. Feb. 14, 1990) (stay granted on Feb. 17, 1990, pending appeal).

§ 1985(3).

B. There Is No Conflict Among the Circuit Courts As To Whether a Physical Blockade Impedes the Right To Travel.

Petitioners' only other allegation challenging the court of appeals' holding under § 1985(3) is that their blockades do not infringe upon the right to travel. The district court found to the contrary, based on undisputed evidence that women routinely travel from out of state to obtain services in the medical facilities targeted by petitioners.[9] A109, A135.

Petitioners suggest that this case is distinguishable from Griffin v. Breckenridge, 403 U.S. 88 (1971), in which this Court held that private interference

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[9]Petitioners' contention that there was no evidence that a particular respondent's right to travel had been infringed before injunctions were issued misses the point. The remedy sought here was injunctive relief; respondents established threat of future injury.

with the right to travel was actionable under § 1985(3), because petitioners' blockades are self-styled as "non-violent sit-in demonstrations." Pet. at 13. No case suggests that the right to travel is only protected against violent infringements, and not against "non-violent" but lawless walls of hundreds of persons literally stopping travel to a woman's destination.[10]

Petitioners assert no conflict among the circuit courts on this issue, for there is none.

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[10]Petitioners' suggestion that the right to travel should only be protected against state action, Pet. at 12, has long been refuted. Griffin, 403 U.S. at 105-06.

III. THE COURT'S IMPOSITION OF COERCIVE FINES FOR CIVIL CONTEMPT IS FULLY CONSISTENT WITH THIS COURT'S PRECEDENT, AS REFLECTED MOST RECENTLY IN SPALLONE v. UNITED STATES.

Petitioners argue that the coercive civil contempt fines imposed on them were actually penalties for criminal contempt, and therefore could not be imposed without a full trial. However, the fines are a classic example of coercive civil contempt.

The district court expressly included the threat of future fines in its temporary restraining order to coerce compliance, and only levied the fines after petitioners admitted in stipulated facts that they had violated the order with notice of its terms.

Petitioners neglect even to mention this Court's most recent affirmation that fines set forth in an order to coerce future compliance are civil, not criminal,

contempt sanctions. In Spallone v. United States, 110 S. Ct. 625 (1990), this Court recognized that an order containing such a sanction, the imposition of which is conditional upon contempt following entry of the order, falls within a court's "inherent power to enforce compliance with . . . lawful orders through civil contempt." 110 S. Ct. at 632, quoting Shillitani v. United States, 384 U.S. 364, 370 (1966).[11]

Here, as in Spallone, the district court was faced with open contempt of an earlier

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[11]Hicks v. Feiock, 485 U.S. 624 (1988), from which petitioners quote, Pet. at 13-14, affirms this same principle. If the petitioner can avoid paying the threatened fine simply by obeying the court's order (here by allowing access to clinics targeted for Operation Rescue demonstrations), the contempt fine is remedial, conditional and civil in nature. Cases cited by petitioners, Pet. at 14-15, draw the precise distinctions drawn in Spallone, i.e., fines imposed to coerce compliance are civil; fines imposed to punish are criminal.

court order. On May 2, 1988, New York State Supreme Court Justice Cahn entered an order which prohibited petitioners from blocking access to abortion clinics. Petitioners promptly violated that order on May 3, 1988, and admitted as much in stipulated facts to the district court on May 4. Like the Spallone court, the district court here responded appropriately by including civil coercive sanctions in an order designed to secure future compliance. Petitioners decided not to comply, knowing the consequences. The imposition of the promised civil contempt fines after petitioners' admitted violations of the May 5 temporary restraining order was entirely appropriate. This Court need not grant

certiorari to restate the principles so recently enunciated in Spallone.[12]

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[12]The remainder of the issues for which petitioners seek a writ of certiorari merit little comment. Summary judgment was perfectly appropriate, because there were no material issues of fact: petitioners admitted that they had blocked access to abortion facilities, and that they intended to do so in the future.

Petitioners' contention that their First Amendment rights are infringed by an injunction against blocking physical access to a medical facility is contrary to settled law. Cameron v. Johnson, 390 U.S. 611, 617 (1968); Adderley v. Florida, 385 U.S. 39, 47-48 (1966); Cox v. Louisiana (I), 379 U.S. 536, 554-55 (1965). Even petitioners concede that "temporarily blocking entry to an abortion center is not of itself protected by the First Amendment." Pet. at 20. Under the injunction, petitioners are free to demonstrate outside abortion facilities, so long as they do not block access to the facilities or subject patients to physical abuse or tortious harassment.

Finally, petitioners' arguments that respondents lack standing to seek injunctive relief and that sanctions for counsel-advised abuse of discovery were improper are without a shred of support in case law or logic.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: April 3, 1990
New York, New York

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